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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 50

SAN DIEGO BUILDING TRADES COUNCIL, MILLMEN'S UNION, LOCAL 2020, BUILDING MATERIAL AND DUMP DRIVERS, LOCAL 36,

Petitioners,

vs.

J. S. GARMON, J. M. GARMON and W. A. GARMON,

Respondents.

On Writ of Certiorari to the Supreme Court of California

RESPONDENTS' PETITION FOR REHEARING

TO THE UNITED STATES SUPREME COURT AND THE JUSTICES THEREOF:

The respondents in the above entitled cause present this, their petition for rehearing of the above entitled cause, and, in support thereof, respectfully show:

I

THE DECISION DEPRIVES RESPONDENTS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW

The decision of this Honorable Court determines that the parties are subject to the National Labor Relations Act with respect to the matters in dispute, but deprives them of any effective remedy for the enforcement of the rights granted by the said Act, and deprives them of any effective forum for the adjudication of their rights and obligations under the said Act. Other persons subject to the same Act are furnished a remedy. This discrimination against respondents is based essentially on the size and wealth of the enterprise and not on any reasonable classification relating to the merits of the case. Still other persons are held not to be subject to the Act at all and therefore entitled to any remedy given them by state law.

This obviously unjust and discriminatory treatment constitutes a deprivation of the property of respondents without due process of law as set forth in more detail in the petition for rehearing filed by the respondent in *Amalgamated Meat Cutters* v. *Fairlawn Meats, Inc.*, Case No. 41.

II

THE DECISION WORKS AN UNCONSTITUTIONAL INTERFERENCE WITH THE POLICE POWER OF THE STATES AND THEREBY DISTURBS THE FABRIC OF THE FEDERAL SYSTEM

The holding of this Court is that the states are deprived of power to act in a large field clearly within the scope of their police power. The sole reason for this is that this Court has attributed

to Congress an unexpressed intention to exclude them.

This Court has not considered whether Congress would have had the power to do what this Honorable Court has held that it intended to do. The National Labor Relations Act is an exercise of the power granted to Congress by Article I, Section 8, of the United States Constitution to regulate commerce among the states. The Act as interpreted by this Court is not, however, a regulation *of* interstate commerce. It is a regulation of all business *affecting* interstate commerce. This Court long ago determined that a federal regulation depriving the states of their power over intra-state activities is permissible under the interstate commerce clause to the extent, but *only* to the extent, that it is reasonably necessary to protect interstate commerce and enable the federal regulation of interstate commerce to be applied effectively. *Houston, East & West Texas Railroad Company* v. *United States (The Shreveport Rate Case)* (1914) 234 U. S. 342, 58 L. ed. 1341. This Court has held, moreover, that the National Labor Relations Act may, under the principle established in the Shreveport case, be constitutionally applied to businesses and activities which merely affect commerce. See the cases cited in Respondents' Brief in this case at page 40, and particularly *National Labor Relations Board* v. *Jones & Laughlin Steel Co.*, (1937) 301 U. S. 1, 38, 81 L. ed. 893, 912. That decision was based upon an express holding by Congress, contained in the Preamble to the Act itself, that there existed practices harmful to interstate commerce which the Act was designed to prevent. Neither that case nor any other furnishes any support to the present decision, which deprives the states of their power to act without making any attempt to prevent these harmful activities, and to the contrary renders them immune from any regulation which would effectively prevent them.

None of the arguments raised by petitioners in this case and in *Amalgamated Meat Cutters* v. *Fairlawn Meats, Inc.*, Case No.

41, or by appellant in *Guss* v. *Utah Labor Relations Board,* Case No. 280, or by any of the *amici curiae* supporting them, touch this problem in any way. None of them suggest any reason why depriving the states of their power to act would under the circumstances have any tendency to protect interstate commerce or to make more effective the congressional regulation of interstate commerce. None of them suggest any reason why Congress could have thought it would have such a tendency. None of the reasons given by this Court for its decision touch this question. They treat the case as if Congress had the plenary power to regulate all the industries involved for all purposes, so that the only question is what is the best regulation of such businesses, or the regulation that would be and presumedly was preferred by Congress, considered only for its own sake and not in relation to any need to protect interstate commerce.

Nothing in the Preamble to the Act or in the Act itself suggests any need for excluding state power over such industries, or any industries, as a means of protecting interstate commerce where the federal regulation is not effectively applied.

Therefore, none of the arguments made by petitioners in this or any other case, and no reason given in the opinion in this case and no finding or purpose that can be found in or inferred from the Act itself, even suggests any reason why the power to carry out the intention attributed by this Court to Congress would fall within the limited powers conferred by the Constitution.

We submit therefore that, as was pointed out at p. 39 of our brief, no constitutional basis has been shown for the interference with state power created by this Honorable Court's interpretation of the National Labor Relations Act, and that interference, therefore, violates the Tenth Amendment to the Constitution of the United States.

CONCLUSION

Upon the foregoing grounds it is respectfully urged that this petition for a rehearing be granted and that the judgment of the Supreme Court of the State of California be upon further consideration affirmed.

DATED: April 16, 1957.

Respectfully submitted

JAMES W. ARCHER
J. STERLING HUTCHESON

Counsel for Respondents

WARD W. WADDELL, JR.
Of Counsel

Certificate of Counsel

I, counsel for the above named respondents, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

JAMES W. ARCHER
Counsel for Respondents